Supreme Court, U.S.
FILED

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No. 01-

IN THE

Supreme Court of the United States

ROY W. GRANT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The statute of limitations in a patent infringement case against the United States government is governed by 28 U.S.C. § 2501. Equitable principles permit a tolling of the period of limitations where it is determined that there was a "legal disability" preventing the patent holder from filing suit earlier. The disability must be shown to have occurred within the original statute of limitations period, must be continuing in nature, and is then tolled up until three years after the disability ceases.

The question presented is whether one's undisputed mental illness, which also results in a permanent and continuing medical retirement disability, constitutes a legal disability for purposes of tolling the statute of limitations in a patent infringement lawsuit against the United States government.

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Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case.

OPINIONS BELOW

The district court's opinion (per Damich, E.J.), dated February 2, 2001, granting respondent's summary judgment motion is not published ("Pet. App." 4a-18a). The court of appeals decision, (per curiam), reaffirming the district court's opinion, was issued as a mandate and is not otherwise published (Pet. App. 1a-3a).

STATEMENT OF JURISDICTION

The court of appeals entered its opinion on February 15, 2002 and issued its mandate on April 9, 2002. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

The statutory basis for jurisdiction of petitioner's claim for patent infringement in the United States Court of Federal Claims is under Title 28 U.S.C. § 1498. The statutory basis for tolling of the statute of limitations is under 28 U.S.C. § 2501.

STATEMENT OF THE CASE

Petitioner, Roy W. Grant, is a retired civil service employee of the United States Air Force on permanent disability under Medical Disability Retirement from the civil service in July of 1985. In January of 1976, petitioner, during active duty with the air force, devised and created a round

perforated disc object to be attached to the lens of a camera identified as a flame filter. The device is used to filter out light intensities during the course of the photographic process (i.e. while taking a picture or pictures). It is useful to more effectively track missile and aircraft ignition and flight, and reduce the amount of intense light that may cause blindness and other injury to the natural eye of photographers taking pictures and tracking such aircraft.

Petitioner received an exclusive patent on his invention from the U.S. Patent Office on December 16, 1980. Since that time he pursued monetary recovery from the air force based on the continuing use by the U.S. military of his patented invention. However, petitioner has never known of the actual dates of manufacture and use of any flame filters since the late 1970's, and certainly has had no such knowledge of this information since the time he received his patent from the government.

Petitioner was put through many changes in work assignments and persevered aggravating work conditions beginning after 1980. All of these events and circumstances finally led to plaintiff's breakdown and permanent disability leave from the air force in March of 1985. To this day, petitioner has continued to suffer significant mental and psychological distress emanating from his employ with the air force. His preeminent mental condition is, and has been, based on symptoms of paranoia and schizophrenia. All of petitioner's medical conditions, symptoms and diagnoses are supported by certain medical reports and opinions of his doctors while still serving in the air force (which include Dr. Charles Wilson and Dr. Ronald Shlensky), as well as his current psychiatrist for the past several years, Dr. Binna Chahal. Pet. App. 13a n.6. All of the reports and declarations submitted by these doctors and introduced as evidence in the summary judgment motion were uncontested and unrefuted.

1. This case was originally filed in the United States Court of Federal Claims on May 19, 1997. Following the close of limited discovery proceedings, respondent brought a motion for summary judgment based on the statute of limitations defense set forth in 28 U.S.C. § 2501. Respondent asserted that petitioner failed to file his action within six (6) years from the time his cause of action accrued, and that the court lacked jurisdiction under *28 U.S.C. § 2501*.

Petitioner filed his opposition to the summary judgment motion asserting two primary arguments. *First*, there existed a genuine issue of material fact as to when the subject flame filters had actually been manufactured (i.e. establishing the date or dates that petitioner's claim of patent infringement accrued), and that the Government failed to meet its burden of proof. *Second*, petitioner argued that, in any event, the statute of limitations had been tolled due to petitioner's history of mental and psychological distress since in or about 1985 constituting legal disability under *28 U.S.C. § 2501*. Since petitioner's disability is continuing to this day, his patent infringement action was timely filed. Petitioner would have three (3) years from the date of termination of his mental illness disability to bring suit. It is the legal disability argument that remains the subject of this petition for writ of certiorari.

2. Respondent's summary judgment motion was decided without oral argument, although petitioner's counsel requested such. The claims court rendered its decision on February 2, 2001 granting summary judgment and dismissing petitioner's complaint for patent infringement, with prejudice.

The claims court held that it could not conclude from the evidence presented that petitioner was legally disabled within the meaning of Section 2501. Pet. App. 13a. The court

further stated that it does not question the legitimacy of petitioner's unfortunate psychological condition — only that petitioner has however failed to show how his condition prevented him from comprehending or pursuing his legal rights. Pet. App. — bottom of 13a and top of 14a.

The effect however of the claims court decision is that it most definitely puts into question the legitimacy of petitioner's disability. It has made a judgment as to the worthiness of petitioner's medical disability. It is this subjective reasoning of an ambiguous legal principle ("legal disability") that warrants a more comprehensive and universal mandate that should emanate from this Court.

3. Petitioner appealed the decision of the claims court to the United States Court of Appeals for the Federal Circuit on April 2, 2001. The circuit court rendered its decision on February 15, 2002 affirming the claims court decision.

The circuit court decision summarily adhered to the analysis and conclusions by the claims court. The decision merely held that petitioner had the responsibility to offer sufficient evidence to support a judgment in his favor, and that the evidence of the kind of disability required to toll the statute of limitations was insufficient. Pet. App. 2a.

By its summary disposition and reliance on the claims court decision, the circuit court decision leaves in doubt what type and extent of evidence is sufficient in order to determine a finding of legal disability. As both decisions were also left unpublished, these issues remain even more problematic.

4. This petition for a writ of certiorari followed.

REASONS FOR GRANTING THE WRIT

The petition should be granted for three reasons. *First*, the Federal Circuit's decision leaves unclear as to what types of mental illness, or other psychological disorders, constitute a *legal disability*. Review should be granted to clarify the definition of legal disability, as well as establish a minimum standard or criteria warranting a tolling of the period of limitations due to the particular disability. This redefinition is of great importance in light of the various categories of conflicting medical and psychological diagnoses and disorders that exist.

Which types or categories of psychological and mental disorders should constitute a "legal disability" so as to equitably toll the applicable statute of limitations? The Federal Circuit's holding that Petitioner's evidence of his disability was not sufficient evidence of the kind of disability required to toll the statute of limitations period of 28 U.S.C. § 2501 leaves open the question of what does and what should constitute a "legal disability?" The Federal Circuit is the only circuit to have defined legal disability in cases where a plaintiff has sought redress against the United States government since all such claims must be brought initially in the United States Court of Federal Claims.

There are just a handful of cases that have been decided by the claims court in the past specifically addressing the issue of one's legal disability and whether it warrants a tolling of the applicable period of limitations. These cases are all well distinguishable on their own facts. Yet none of these cases address the legitimacy of one's special or particular mental illness, and how that illness has prevented him or her from maintaining any level of competence to adequately

pursue his or her legal rights while suffering under the disability. Review and guidance by this Court would promote much needed uniformity in clarifying what types and circumstances of mental illness warrant the tolling of the period of limitations.

Second, the Federal Circuit's holding leaves ambiguous and uncertain the nature and extent of evidence of the particular recognized legal disability that is required to toll the statute of limitations period of 28 U.S.C. § 2501. The Federal Circuit held that petitioner's evidence of his disability during the pre-filing period was not evidence of the kind of disability required to toll the six year statute of limitations period of 28 U.S.C. § 2501. What constitutes sufficient evidence in order for the court to make a factual finding of legal disability?

Is it direct scientific and medical proof? Are unopposed and undisputed affidavits and declarations from medical doctors and psychiatrists sufficient? Should there be more? Must there be more?

Petitioner has proffered more evidence than others in previous claims court decisions relating to his mental illness. In fact, in prior cases such as ***Bennett and Adams***, ***infra***, the record was replete with any evidence as to the claimant's disability.

Third, the Federal Circuit's decision conflicts with holdings of this Court relating to traditional principles of equitable tolling in actions brought against the United States government. The issue is, once determined, is a legal disability an instance of equitable tolling, or, can principles of equitable tolling be further considered by the courts in

deciding whether to toll the applicable period of limitations. The principle of "legal disability" may affect or bear upon other traditional notions of equitable tolling under *Irwin v. Department of Veteran Affairs*, 498 U.S. 89 (1990) and its progeny.

I. THE DECISION BELOW LEAVES UNCERTAIN THE MEANING OF LEGAL DISABILITY FOR PURPOSES OF DETERMINING A TOLLING OF THE STATUTE OF LIMITATIONS

The circuit court's decision leaves unanswered the question of what constitutes "legal disability?" The history of decisions by the claims court in the past has demonstrated a careful analysis of various claims of legal disability. The claims court acknowledged this as well in its decision in this case. Pet. App. 12a. While there has been an analysis and factual distinctions made on a case by case method, the closest the courts have come to define the concept of "legal disability" came in the cases of *Goewey v. United States*, 612 F.2d 539 (Ct. Cl. 1979), and *Bennett v. United States*, 36 Fed. Cl. 111 (1996).

The claims court in *Goewey* acknowledged on its own that the claims court up until that time had not actually defined the term "legal disability." *Id.* at 544. The court continued to give various examples of how certain disabilities may have an affect on the statute of limitations, but then concluded that "[v]ariations proceed from this general definition, all of whose elements need not be present in each case." *Id.* at 545.

The claims court in *Bennett*, some 17 years later, established the presumption of sanity and competence vis-a-vis insanity and incompetence. It held that the phrase "legal disability" was intended to replace the prior archaic terminology in the statute which defined certain classes of persons eligible for tolling. The term persons with a "legal disability' was hence born. However, the revised statute was not meant to change original tolling principles under federal law.

Legal disability must be determined on a case by case basis. In *Powers v. United States*, 15 Cl. Ct. 702 (1988), the court held that the statute of limitations were tolled where a former army veteran was declared incompetent even though during the period of his incompetence it was determined that he was able to initiate several lawsuits relating to his military retirement pay.

In *Adams v. United States*, 46 Fed. Cl. 834 (2000), a veteran brought suit against the government asserting a Fifth Amendment takings claim. The government moved to dismiss based on the same statute of limitations, 28 U.S.C. § 2501. The court ruled against plaintiff based on his failure to properly establish any grounds constituting a legal disability. In fact, plaintiff had failed to offer any evidence at all with respect to a disability.

In granting the government's motion to dismiss, the Claims Court held that:

> Furthermore, plaintiff totally fails to identify any actual physical or mental incapacitation which would, in any reasonable way, have prevented him from pursuing his claim. Therefore, the court is

> constrained to hold that plaintiff was not under any disability which would entitle him to a tolling of the statute of limitations.

Id. at 840.

In *Powers*, the court cited to *Goewey*, *supra*, where in that case the plaintiff had been under psychiatric care, but had not been conclusively declared disabled, incompetent, or otherwise. The court in *Powers* noted this distinction and found that in its case the ordinary presumption of competence was overcome by the presence of an adjudication of incompetency by a court of competent jurisdiction.

Should there be a distinction between a court adjudication of incompetence vis-a-vis conclusive and undisputed medical reports and opinions evidencing the very same conclusion of mental incompetence? Petitioner suggests that there should be no such distinction, especially where the evidence proffered by the claimant is entirely unopposed. Where there lies no contradicting evidence, all benefit of the doubt should go to the claimant.

However, a conflict within claims court decisions does exist even where a state court has first declared a legal adjudication of incompetence. Although the court in *Powers* tolled the statute of limitations based on the previous court adjudication of claimant's incompetence, the reverse occurred in the case of *Leeth v. United States*, 22 Cl. Ct. 467, 484 (1991) where tolling was not permitted although there was a prior state court determination of incompetence. There remains conflict and inconsistency as to how the claims court treats a prior adjudication of competence as the barometer for determining whether one suffers from a legal disability.

In light of these prior inconsistent decisions by the claims court, this Court's review is required.

Petitioner suffers from paranoia and schizophrenia. These are mental illnesses. The diagnoses and affects of these mental conditions were fully elaborated upon by petitioner's past and present doctors and acknowledged by the claims court in its decision. Pet. App. 13a. Yet, the claims court further stated it could not conclude from this evidence that petitioner was legally disabled within the meaning of Section 2501. It remained merely sympathetic to petitioner's situation. Pet App. 13a. If the courts are going to judge what degree and extent of mental illness impairs one's ability to comprehend his legal rights, a uniform approach and guideline should issue from this Court.

Although it has been a long recognized illness, there has been much recent public news and notoriety concerning the mental illness of schizophrenia. This has been marked by the recent Academy Award winning movie, "*A Beautiful Mind*", the recent child drowning murders of mother Andrea Yates, a recent cover story and article entitled "*The Mystery of Schizophrenia*" appearing in the March 11, 2002 edition of Newsweek magazine, as well as others. Schizophrenia is a disease. Psychosis, the inability to distinguish reality from imagination, lies at the core of schizophrenia. Some 2.5 million Americans have the disease. Petitioner suffers from this mental illness through today, and has been since in or about the early part of 1985. Moreover, it is a mental illness that arose and was caused by his very employment with the United States Air Force, the very same party that has infringed on his patent now for over 20 years without compensating him.

The term *"mental illness"* is defined in Black's Law Dictionary, 7th Edition, as a disorder in thought or mood so substantial that it impairs judgment, behavior, perceptions of reality, or the ability to cope with the ordinary demands of life. It is this impairment that has prevented petitioner from being able to pursue his claim against the government in a proper manner.

The claims court relied heavily on the decisions in *Goewey and Bennett* which held that a disability must be a serious impediment or handicap so as to preclude the individual from comprehending its legal rights and from comprehending the necessity of prosecuting those rights. Pet. App. bottom 13a, top of 14a. The claims court further stated that a legal disability does not include all kinds of mental conditions. Pet. App. 14a.

The issue then is: What types of mental illnesses constitute a legal disability? If a recognized mental illness such as schizophrenia renders one incapable of comprehending his legal rights, and prosecuting those rights, should not that condition warrant a finding of legal disability? Review by this Court is necessary to resolve these issues and prior inconsistent holdings by the claims court.

II. THE DECISION BELOW LEAVES UNCERTAIN THE KIND OF EVIDENCE NECESSARY TO SUPPORT A FINDING OF LEGAL DISABILITY

Since the circuit court's decision relies so heavily on the conclusions and analysis of the lower claims court decision, the reasoning of that court must be fully considered. The claims court held that petitioner had "failed to show how his condition prevented him from comprehending or pursuing his legal rights." Pet. App. 14a.

However, both the claims court and circuit court conclude that petitioner did not furnish sufficient evidence of the kind of evidence required to establish a legal disability. Pet App. 13a, 2a. What then is the minimum required evidence necessary to support a finding of legal disability?

Petitioner has affirmatively demonstrated through uncontroverted direct evidence that he has suffered, and continues to suffer from significant mental and psychological distress constituting both permanent and legal disability. The record and facts are clear from his past and present doctors. This was even acknowledged by the claims court in its decision. Pet. App. 13a, 14a.

This is medical or scientific proof of one's mental state and how that mental condition affects his abilities to function and behave. The unopposed and undisputed psychiatric evidence offered by petitioner stated that he was unable to manage his legal affairs, that he suffered from paranoia, schizophrenia with psychotic episodes or psychotic features. Dr. Chahal stated that petitioner could not function in a way to handle his legal affairs. This was acknowledged by the claims court. Pet. App. 13a. Yet, the claims court then summarily dismisses this undisputed expert opinion. The quandary is then what would have satisfied the court in being able to determine whether petitioner's mental illness was so grave as to make it impossible for him to comprehend or pursue his legal rights?

While the claims court relied on the holding in *Bennett v. United States*, 36 Fed. Cl. 111 (1996), to reject petitioner's claim of legal disability, that case is distinguishable on the facts. In that case, the claims court did not have the benefit of knowing or being able to ascertain Bennett's medical condition. The briefs submitted by plaintiff failed to state the nature, cause or duration of his medical care. *Id.* at 112. Accordingly, without more, the

court could not find a basis for tolling the statute of limitations based on Bennett's legal disability. However, in concluding his opinion, Chief Judge Smith stated the court would consider further evidence of the nature and timing of plaintiff's claimed disability, and allowed plaintiff 30 days to file a reply. *Id.* at 113.

Due to the various types of evidence which have been presented, or not presented as the case may be, in prior decisions, this particular case warrants this Court's review to help determine what kind of evidence is sufficient to warrant a finding of legal disability.

III. CERTIORARI IS WARRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH PRIOR DECISIONS OF THIS COURT RELATING TO EQUITABLE TOLLING

The principle of legal disability appears to be an instance or basis for otherwise invoking the traditional federal principle of equitable tolling. Where a federal statute already allows for equitable tolling within the language of the statute itself, additional tolling of the period of limitations will not generally be allowed. *Irwin v. Department of Veteran Affairs*, 498 U.S. 89 (1990); *United States v. Beggerly*, 524 U.S. 38 (1998).

28 U.S.C. § 2501 provides in pertinent part that:

> A petition on the claim of a person under legal disability . . . may be filed within three years after the disability ceases.

(Citation omitted).

Thus, it appears that Congress has already provided for an equitable tolling exception within the statute itself. However,

in *United States v. Brockamp*, 519 U.S. 347 (1997) this Court held that mental incompetence can be grounds for tolling the statute of limitations..

The issue has never been addressed as to whether a finding of legal disability must stand on its own, or may other principles of equitable tolling be additionally considered before determining whether to extend the statute of limitations in a given case. This Court's review is necessary to clarify whether traditional grounds for equitable tolling, plus any other equitable grounds, can be considered together with a finding of legal disability in determining whether to toll the applicable statute of limitations.

Notwithstanding the above, traditional and fundamental principles of fairness and substantial justice warrant that the period of limitations should be tolled in this case, as well as many other cases where mental illness is found to prevent one from pursuing his or her legal rights. One of the basic and fundamental principles emanating from our Constitution is to assure that such inventors are protected by patent laws and rewarded for their outstanding achievements.

On September 10, 1997, in a statement before the House of Representatives Subcommittee on Immigration and Claims, then Chief Judge Loren A. Smith of the United States Court of Federal Claims stated in part:

> The creation of a court to do justice responded to a basic democratic imperative: fair dealing by the government in disputes between the government and the private citizen. Indeed, as Abraham Lincoln noted: 'It is as much the duty of Government to render prompt justice against

> itself, in favor of citizens, as it is to administer the same between private individuals.' Throughout its history, the Court of Claims strove to give vitality to the spirit of Abraham Lincoln's admonition.

An inventor often suffers monetary damages, as well as other harm, when there is an improper infringement upon his patent. The law, as well as justice and reason, dictates that in such a case, the patent holder must be rewarded or receive just compensation. The government's infringement is equivalent to a taking of one's property, and is, of course, protected under the Fifth Amendment. This Court is asked to enforce the protections granted by the United States Constitution on behalf of petitioner and all other patent holders who have been unwillingly subjected to the circumstances enumerated above.

CONCLUSION

For the foregoing reasons, Petitioner's application for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — DECISION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT DATED FEBRUARY 15, 2002

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

01-5081

ROY W. GRANT,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

DECIDED: February 15, 2002

Before MAYER, *Chief Judge*, BRYSON, and DYK, *Circuit Judges*.

PER CURIAM.

Appellant Roy W. Grant filed this action in 1997, contending that the government made use of technology that was embodied in a patent belonging to him, and that pursuant to 28 U.S.C. 1498(a) the government should be required to compensate him for the value of the patent rights that the government appropriated. The Court of Federal Claims entered summary judgment for the government, holding that Mr. Grant's action was untimely.

Appendix A

We agree with the analysis and conclusion of the Court of Federal Claims. Because the issues Mr. Grant raises in this court were fully addressed and disposed of by the Court of Federal Claims in its comprehensive opinion, we *affirm* the judgment of the Court of Federal Claims for the reasons given by that court. As the non-moving party with the burden of proof on the issue of timeliness, *see Alder Terrace, Inc. v. United States*, 161 F.3d 1372, 1377 (Fed. Cir. 1998), Mr. Grant had the responsibility to offer sufficient evidence to support a judgment in his favor, *see Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The trial court correctly concluded that Mr. Grant failed to offer anything more than speculation that some of the accused flame filters might have been manufactured within the limitations period. In addition, the court correctly held that Mr. Grant's evidence of his disability during the pre-filing period was not evidence of the kind of disability required to toll the six-year limitations period of 28 U.S.C. § 2501. The trial court therefore correctly entered summary judgment for the government.

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

01-5081

ROY W. GRANT,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

JUDGMENT

Appeal from the United States Court of Federal Claims
in 97-CV-350, Judge Edward J. Damich.

This CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

AFFIRMED.

ENTERED BY ORDER OF THE COURT

DATED: FEB 15 2002 s/ Jan Horbaly
Jan Horbaly, Clerk

ISSUED AS A MANDATE: April 9, 2002

APPENDIX B — OPINION OF THE UNITED STATES COURT OF FEDERAL CLAIMS DATED AND FILED FEBRUARY 2, 2001

UNITED STATES COURT OF FEDERAL CLAIMS

No. 97-350 C

(Filed: February 2, 2001)

ROY W. GRANT,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

OPINION

I. Introduction

This matter is before the Court on Defendant's motion for summary judgment. Defendant contends that Plaintiff's patent infringement action is barred by the statute of limitations because there was no manufacture or use of the alleged patented invention within six years after the claim accrued. Plaintiff argues that the statute of limitations should be tolled because his placement on permanent disability leave from the Air Force by virtue of his diagnosed psychological disorders rendered him legally disabled. For the reasons discussed herein, Defendant's motion for summary judgment is GRANTED. Plaintiff's complaint is dismissed with prejudice.

Appendix B

II. Background

In 1976, Mr. Roy Grant (hereinafter Plaintiff) was an employee of the Department of the Air Force at Vandenberg Air Force Base in California. He worked as a scientific and technical photographer. Plaintiff was issued United States Patent 4,239,327 (the '327 patent) on December 16, 1980, from an application filed on March 6, 1978. The '327 patent relates generally to a device which is a round perforated disc that can be attached to a telescopic lens on a camera. The invention, better known as "flame filter," allows the photographer to more effectively track missile ignition and flight by blocking the intense light that otherwise temporarily blinded the photographer. *See* '327 patent. The "flame filter" is useful for photographing missile launches at night.

Plaintiff contends that the United States Government through the Air Force manufactured and used his invention at several military installations across the country, including but not limited to Vandenberg Air Force Base in Los Angeles, California. On January 16, 1981, Plaintiff filed an administrative claim with the Air Force based on the alleged manufacture and use of his invention. On June 29, 1981, the Air Force denied the claim. The administrative claims was pending for 164 days. On April 6, 1982, Plaintiff requested reconsideration of the denial of his claim. The Air Force denied this request on April 20, 1983.

Plaintiff filed a complaint in the United States Claims Court, predecessor of the United States Court of Federal Claims, on August 9, 1985, based on the Air Force's alleged use of the claimed "flame filters." On September 23, 1985, the action was dismissed pursuant to RUSCC (now RCFC) 41(a)(1)(A).

According to Plaintiff, the action was terminated because he was not "financially, legally, and mentally qualified to be able to follow thru [sic] with [the] matter."[1] Plaintiff also unsuccessfully tried to obtain compensation for the alleged use of his invention through the offices of several Senators and Members of Congress during the period from 1987 to about 1993. *See Joint Preliminary Status Report* (September 27, 1999).[2]

Plaintiff again fled a complaint in this court on May 19, 1997, alleging patent infringement. An amended complaint was filed on November 19, 1999.[3] The parties agreed that by October

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1. *See Ex. B of Pl.'s Opp'n To Def's Mot. For Summ. J.*

2. But *see Joint Status Report, Areas of Agreement* ¶14 (March 23, 2000) where the parties stated that, "from 1987 to the present, Mr. Grant unsuccessfully sought compensation for the Air Force's use of the accused flame filters through the offices of several Senators and Members of Congress." (emphasis added).

3. Plaintiff, appearing pro se, filed his complaint alleging patent infringement under 28 U.S.C. § 1338(a) and (b). That section, however, does not provide a jurisdictional basis to bring a patent infringement action in the Court of Federal Claims. Section 1498(a) provides that:

> Whenever an invention described in and covered by a patent of the United States is used or manufactured by or for the United States without license of the owner thereof or lawful right to use or manufacture the same, the owner's remedy shall be by action against the United States in the United States Court of Federal Claims for the recovery of his reasonable and entire compensation for such use and manufacture.

28 U.S.C. § 1498(a). The Court allowed Plaintiff to amend its complaint to correct the jurisdictional defect.

25, 1984, the Air Force had made 18 metal flame filters. *See Joint Status Report, Areas of Agreement* (March 23, 2000).[4] It was also agreed that the Air Force had 15 claimed flame filters in its inventory by October 25, 1984. *Id.* Defendant maintains that it currently has 7 claimed flame filters. *Id.* Plaintiff and Defendant do not know of any manufacture of a claimed flame filter after 1980. *Id.* Plaintiff does not have any knowledge, information or belief as to actual dates of manufacture of the patented invention beginning six years before the filing of the complaint. *Id.*

Defendant has moved for summary judgment because it contends that there has been no manufacture or use of the invention within six years after the claim accrued. As such, Defendant argues that Plaintiff's action is time barred.

Plaintiff contends that the statute of limitations is tolled because of Plaintiff's legal disability. Plaintiff has been on permanent disability from the United States Air Force since March of 1985. Plaintiff contends that he has been experiencing "mental anguish and psychological trauma" as a result of "mental abuse and work related fatigue" due to his efforts to secure compensation from the Air Force for the manufacture and use of his invention. Plaintiff maintains that his disability constitutes a "legal disability" under § 2501 and thereby tolls the running of the statute of limitations. Thus, Plaintiff claims that his action is not time barred.

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4. The Court ordered the parties to file a joint status report in which they listed areas of agreement and disagreement. The Court also granted Plaintiff discovery in order to investigate whether an accused flame filter had been manufactured or first used during the applicable statute of limitations.

Appendix B

III. Standard

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. RCFC 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S. Ct. 2505, 2509-10 (1986); *Jay v. Secretary DHHS*, 998 F.2d 979 (Fed. Cir. 1993). A fact is material if it might significantly affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248, 106 S. Ct. at 2510. The party moving for summary judgment bears the initial burden of demonstrating the absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553-54 (1986). The court must resolve any doubts about factual issues in favor of the non-moving party, *Chiuminatta Concrete Concepts, Inc. v. Cardinal Indus., Inc.*, 145 F.3d 1303, 1307 (Fed. Cir. 1998) and draw all reasonable inferences in its favor. *See Gasser Chair Co. v. Infanti Chair Mfg. Corp.*, 60 F.3d 770, 773 (Fed. Cir. 1995).

IV. Discussion

A. Claim accrual

Section 2501 provides that:

> [e]very claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition is filed within six years after such claim first accrues.

* * *

Appendix B

> A petition on the claim of a person under legal disability . . . at the time the claim accrues may be filed within three years after the disability ceases.

28 U.S.C. § 2501. The Court of Federal Claims does not possess jurisdiction over a patent infringement action unless the patentee brings the action within six years of the manufacture or first availability for use of the invention. *Starobin v. United States*, 662 F.2d 747, 749 (Ct. Cl. 1981) ("for each particular device only one right to recovery can arise, and that right must occur upon the fast manufacture or use by or for the government of that specific device.") *See also Regent Jack Mfg. Co. v. United States*, 167 Ct. Cl. 815 (1964) (invention was first used when it was first available for use by the government.) The unauthorized use or manufacture by the United States Government of an invention covered by a patent is a taking of property by eminent domain. *See Pitcairn v. United States*, 547 F.2d 1106, 1114 (Ct. Cl. 1976).[5] The infringer takes a compulsory license in the patent. *Id.* However, a particular device can only be

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5. In *Pitcairn*, the Court of Claims stated:

> [t]he use or manufacture by or for the Government of a device or machine embodying any invention protected by a United States patent, is a taking of property by the Government under its power of eminent domain. The nature of the property thus taken is a license in the patent, the claimed invention of which is used or manufactured by or for the Government, and such license continues throughout the life of the patent, or the period of the infringing procurement, whichever is shorter.

Pitcairn v. United States, 547 F.2d 1106, 1114 (Ct. Cl. 1976).

taken once during its lifetime. *Starobin*, 662 F.2d at 750. Thus, each subsequent use of that particular patented device after the initial manufacture or use does not mark the accrual of a new cause of action, thereby triggering the statute of limitations. *Id.*

Here, Plaintiff admitted in the March 23, 2000, status report that he had no knowledge of any manufacture of a claimed flame filter after 1980. *See Joint Status Report* (March 23, 2000). The parties also agreed that by October 25, 1984, 18 flame filters had been made and the Air Force had 15 flame filters in its inventory. *Id.* Plaintiff also agreed with Defendant's contention that the Air Force currently has 7 claimed flame filters. *Id.* Defendant contends and the Court agrees that these are admissions by Plaintiff. Plaintiff has offered no evidence, nor can it be reasonably inferred from the evidence that some flame filters were manufactured after 1980. Plaintiff's mere allegation that a flame filter could have been manufactured after this date, without more, is not enough to raise a genuine issue of material fact. Thus, Plaintiff's claim accrued at the latest in October of 1984 when the flame filters were available for use by the government.

In order for Plaintiff to withstand Defendant's motion for summary judgment, Plaintiff must show that at least one of the accused flame filters was manufactured or first used within the statute of limitations period plus any time allotted for tolling. Thus, the threshold matter for the Court is to determine whether the running of the statute of limitations is tolled.

Appendix B

B. Legal Disability

To prevail under a claim of legal disability and thereby toll the running of the statute of limitations, Plaintiff must prove that he was legally disabled at the time his claim accrued and that his disability was continuous from the date that his claim accrued until three years before filing the complaint. *Goewey v. United States*, 612 F.2d 539, 546 (Ct. Cl. 1979). In this case Plaintiff must show that his legal disability was continuous from October of 1984, i.e. when his claim accrued until at least May 19, 1994, three years before he filed his complaint. It is Plaintiff's burden to prove mental incapacity in order to qualify as suffering from a legal disability within the meaning of 28 U.S.C. § 2501. *Goewey*, 612 F.2d at 544; *See also Coon v. United States*, 30 Fed. Cl. 531, 539 (1994), *aff'd* 41 F.3d 1520 (Fed. Cir. 1994) (burden of proving legal disability falls on the plaintiff, as well as the obligation to rebut the presumption of sanity). "The law presumes sanity and competency rather than insanity and incompetency." *Bennett v. United States*, 36 Fed. Cl. 111, 113 (1996) citing *Coon*, 30 Fed. Cl. at 539.

1. Plaintiff has failed to prove that he was legally disabled at the time his claim accrued.

To toll the running of the statute of limitations, Plaintiff must be legally disabled at the time the cause of action accrued. *See Goewey*, 612 F.2d at 546. Although Plaintiff suffers from psychological distress sufficient to place him on permanent disability leave from the Air Force, he does not qualify as legally disabled under § 2501. Legal disability means a serious impediment or handicap that precludes an

individual from comprehending its legal rights and from comprehending the necessity of prosecuting those rights by timely suit, or causes the individual to deliberately forego the filing of a timely suit to vindicate those rights. *Goewey*, 612 F.2d at 544-45; *Bennett*, 36 Fed. Cl. at 113. The legal disability provision of § 2501 is strictly construed. *Id.* As such, a legal disability does not include all kinds of mental conditions. *Goewey*, 612 F.2d at 544. To toll the running of the statute of limitations the legal disability must impair the plaintiff's access to court. *Id.* Moreover, only serious impediments qualify to toll the limitations period, *Bennett*, 36 Fed. Cl. at 113, and "hardship, inconvenience, or ignorance cannot serve as grounds for tolling the statute." *Coon*, 30 Fed. Cl. at 539.

The Courts have carefully scrutinized claims of legal disability. In *Goewey*, the court found that plaintiff was not under a legal disability even though plaintiff was under continual psychiatric care for 18 years, was unable to manage his financial affairs, and suffered from obsessive compulsive neurosis. 612 F.2d 539, 545-46. The court found that plaintiff's efforts in securing his release from hospitalization, his actions in attempting to secure Veteran's benefits for himself and his family, and his defense of criminal prosecutions evidenced an understanding of his legal rights. *Id.* at 545. Moreover, the court noted, "[i]f plaintiff was competent to file [an application with the Air Force Board for the Correction of Military Records], it is difficult to comprehend why at that time he was not also competent to have filed suit in this court." *Id.* at 541. Likewise in *Waldorf*, the court found that plaintiff was not under a legal disability where plaintiff among other things had pursued a claim before

the Social Security Administration. *Waldorf v. United States*, 8 Cl. Ct. 321, 325-26 (1985). *See also Coon v. United States*, 30 Fed. Cl. 531, 535 (1994) (court found plaintiff was not under a legal disability where plaintiff pursued claims before the social security administration and the veterans administration.) Short of a court's declaration of incompetence prior to accrual of a claim, a plaintiff must show a disability that in fact hampers access to the courts. *See Powers v. United States*, 15 Cl. Ct. 702 (1988); *See also Leeth v. United States*, 22 Cl. Ct. 467, 484 (1991) ("state court's determination of incompetency does not toll the running of the statute of limitations contained in 28 U.S.C. § 2501.")

While this Court is sympathetic to Plaintiff's situation, the Court cannot conclude from the evidence presented that Plaintiff was legally disabled within the meaning of § 2501. The evidence submitted by Plaintiff documents that he has suffered from psychological distress, depression, and anxiety over the past two decades and has been unable to hold permanent employment.[6] Dr. Chahal indicated that Plaintiff's condition has prevented him from functioning in any work situation and from managing his legal affairs. *See Declaration of Binna P. Chahal* at 3-4. Managing one's legal affairs is not the test for determining whether one is legally disabled within the meaning of § 2501. The Court does not question

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6. The Court allowed Plaintiff to provide supplemental documentation in support of its claim of legal disability. Plaintiff submitted a declaration from his psychiatrist Dr. Binna P. Chahal. Dr. Chahal has been treating Plaintiff since June of 1995. Plaintiff also submitted prior psychiatric evaluations from previous doctor he had seen.

the legitimacy of Plaintiff's unfortunate psychological condition. Plaintiff, however, has failed to show how his condition prevented him from comprehending or pursuing his legal rights. On the contrary, Plaintiff's actions indicate otherwise. Plaintiff's conclusory and generalized statements in support of his claim of legal disability do not establish that Plaintiff's condition qualifies as a legal disability under § 2501.

Plaintiff's prior infringement action is evidence that Plaintiff was able to comprehend his legal rights. Plaintiff contends that he has been legally disabled since about March of 1985, when he was placed on permanent disability leave. However, on August 9, 1985, appearing pro se, Plaintiff filed an action alleging patent infringement against the Air Force. Even though the suit was terminated by Plaintiff because he was not "financially, legally, and mentally qualified" to continue, this lack of mental fortitude and resources is not the equivalent of an inability to understand the nature of his legal interest. The filing of that action serves as evidence that Plaintiff understood that his claim was based on a theory of patent infringement and that he could secure redress in the courts. Moreover, Plaintiff's attempts during the period from 1987 to 1993[7] to obtain compensation through the

7. The Court notes the existence of an inconsistency with respect to the time frame that Plaintiff sought compensation through the offices of Senators and Members of Congress. In their Joint Status Report of March 23, 2000, the parties indicated that Plaintiff sought compensation from 1987 to the *present.* For purposes of the Court's analysis of Plaintiff's legal disability claim, the actual length of the time period is not material. The fact that Plaintiff sought such compensation is evidence that his "disability" was not continuous throughout the statutory period.

offices of Senators and Members of Congress further illustrates that Plaintiff's psychological trauma did not preclude him from comprehending his legal rights. Lastly, as established through admissions, Plaintiff's claim accrued in October of 1984, which is prior to Plaintiff's onset of disability in March of 1985. Thus, it appears that Plaintiff did not suffer from his disability at the time his claim accrued. Rather as Plaintiff indicated, his condition was directly related to his recovery for patent infringement.[8] In short, his efforts throughout the years to obtain redress for the alleged infringement of his invention evidence a cognitive ability to understand the nature of his legal rights. Therefore, Plaintiff is not legally disabled within the meaning of § 2501.

2. Plaintiff's disability was not continuous

Plaintiff must also prove that his disability was continuous from the date the claim accrued until three years prior to filing the complaint. *Goewey*, 612 F.2d at 546. Even

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8. In arguing that the running of the statute of limitations should be tolled, Plaintiff indicates:

> Mr. Grant is and has been suffering from mental anguish and psychological trauma since in or about 1985. Such problems were the significant result of the mental abuse and work related fatigue he was put through by the Air Force between 1980 and 1985. These problems were also directly related to his rightful pursuit of recovery against the Air Force based on its continuing use and infringement of his patented flame filter.

See Pl.'s Suppl. Mem. of P. & A. In Opp'n To Def.'s Mot. For Summ. J. at 3-4.

if the Court assumed that Plaintiff suffered from a legal disability at some point during the relevant time period, Plaintiff has failed to show that his disability was continuous from the time his claim accrued until three years before filing the complaint. The record provides few, if any, specifics with regard to plaintiff's psychological condition between 1986 and 1995 when he began treatment with his current psychiatrist. While Plaintiff's most recent evaluation describes his condition as both "similar" to diagnoses made in the early and mid 1980s and "ongoing," this does not serve to prove continuity in light of the sparse record. Furthermore, a lucid interval prior to May 19, 1994, begins the running of the statute of limitations. *See Goewey*, 612 F.2d at 546; *See also Waldorf v. United States*, 8 Cl. Ct. 321, 325-26 (1985). Plaintiff's earlier suit and his other efforts to obtain compensation evidence that there were times prior to May 19, 1994, where Plaintiff did comprehend his legal rights and acted upon his rights in a timely fashion. Thus, the disability was not continuous. Moreover, a recurrence of a disability does give the claimant any extra time. *Goewey*, 612 F.2d at 546.

C. Administrative Claim

An administrative claim may serve to toll the running of the statute of limitations. 35 U.S.C. § 286.[9] An action,

9. Section 286 provides that:

> In the case of claims against the United States Government for use of a patented invention, the period before bringing suit, up to six years, between the date of receipt of a written

(Cont'd)

however, must be brought within 12 years, even if an administrative claim is pending for more than six years. *Bendix Corp. v. United States*, 676 F.2d 606, 610-10 (Ct. Cl. 1982). Here, on January 16, 1981, Plaintiff filed an administrative claim with the Air Force based on the alleged manufacture and use of his invention. The claim was denied by the Air Force on June 29, 1981. Pursuant to 35 U.S.C. § 286, the administrative claim serves to toll the running of the statute of limitations for 164 days. Because Plaintiff's claim accrued at the latest in October of 1984, Plaintiff would have had to file suit in this Court by October of 1994, i.e., six years after his claim accrued. In this case, Plaintiff filed suit in May of 1997. Consequently, tolling the running of the statute of limitations for 164 days does not rescue Plaintiffs claim.

(Cont'd)

> claim fox compensation by the department or agency of the Government having authority to settle such claim, and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as part of the period . . .

35 U.S.C. § 286.

Appendix B

V. Conclusion

For the reasons discussed, it is hereby ORDERED that Defendant's motion for summary judgment is hereby GRANTED. The Clerk of the Court is directed to enter judgment in favor of Defendant and to dismiss the complaint with prejudice.

s/ Edward J. Damich
EDWARD J. DAMICH
Judge